

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LYNNE THOMPSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 13-1462
	)	Judge Nora Barry Fischer/
	)	Magistrate Judge Maureen P. Kelly
RANDAL B. TODD, <i>Individually</i> ;	)	
ADMINISTRATOR; PRESIDENT	)	
JUDGE; JOHN PITTMAN; STEVEN	)	
ZAPPALA, JR.; THE ATTORNEY	)	
GENERAL OF THE STATE OF	)	
PENNSYLVANIA,	)	Re: ECF Nos. 2, 3, 4 and 7.
Defendants.	)	

**MEMORANDUM ORDER**

The above-captioned pro se Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person In State Custody (the “Petition”) was received by the Clerk of Court on October 8, 2013, and was referred to Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Civil Rules 72.C and D.

Magistrate Judge Kelly’s Report and Recommendation, ECF No. 4, filed on November 4, 2013, recommended that the Petition be dismissed prior to service because Petitioner had a currently pending appeal in the Pennsylvania Superior Court seeking to attack the very same conviction that she was attacking in the present Petition. Service of the Report was made on the Petitioner at her address of record. Petitioner was informed that, in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and the local rules, she had a specific

period of time in which to file her objections. After being granted an extension of time in which to do so, Petitioner filed her Objections. ECF No. 7.

Nothing in those Objections merits rejection of the Report or extended comment. Notwithstanding Petitioner's arguments, she simply cannot escape the fact that she has an appeal currently pending in the Pennsylvania Superior Court concerning the very same conviction she is attacking in the Petition before this Court. Because the appeal is currently pending, she has not exhausted her state court remedies. Hence, her objections are OVERRULED.

Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 12th day of December, 2013,

IT IS HEREBY ORDERED that the Petition is dismissed without prejudice pre-service because Petitioner has failed to exhaust her state court remedies. All pending motions are denied as MOOT.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 4, filed on November 4, 2012, by Magistrate Judge Kelly, is adopted as the opinion of the Court. A certificate of appealability is DENIED as jurists of reason would not disagree with the procedural holding that Petitioner has failed to exhaust her state court remedies.

The Clerk is to mark the case closed.

/s/ Nora Barry Fischer  
Nora Barry Fischer  
U.S. District Judge

cc: The Honorable Maureen P. Kelly  
United States Magistrate Judge

Lynne Thompson  
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